

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. (This is a GIL).

September 2, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated July 19, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing on behalf of one of our clients, a home healthcare company (The Company) who is in the business of selling and renting medical equipment and supplies. Specifically, we would like clarification as to the taxability of nebulizers.

The Company sells and rents nebulizers to patients pursuant to a doctor's written prescription. The nebulizers are used by patients with respiratory difficulties. The Company sells air compressor nebulizers, ultrasonic nebulizers and hand held nebulizers.

In ST 94-0470, the Department concluded that nebulizers with compressors and hand held nebulizers were taxable at the low rate when the equipment is part of a system used in breathing by patients who have breathing disabilities.

In ST 95-0059, the Department concluded that air compressor nebulizers used by tracheotomy patients qualifies for the low rate while ultrasonic nebulizers are taxable at the high rate.

In ST 95-0303, the Department concluded that nebulizers used for the oral inhalation of medication are taxable at the high rate.

Patients are prescribed nebulizers due to some form of illness, injury or disability that effects the patient's ability to breathe without the use of extraneous equipment. In addition, the nebulizers aid in the inhalation of respiratory medicines. The nebulizers all force air and respiratory medicines deep into the patients lungs where the medicine can be better absorbed by the patient. The major difference between the various types of nebulizers is the velocity by which the nebulizer forces air and medicines into the patient's lungs.

We believe that the nebulizers sold and rented by the company should all be taxed at the low rate since the primary purpose of the company's sales and rentals of nebulizers is as part of an overall program of respiratory therapy required by patients with breathing disabilities. It is virtually impossible to determine the individual primary medicinal purpose of each patient prescribed a nebulizer since the medicinal purposes are in fact intertwined. The nebulizers assist in the inhalation of respiratory medicines by patients with breathing difficulties, with the nebulizer typically being a part of an overall treatment plan. In addition, we see no clear distinction as to why ultrasonic nebulizers should be taxed at the high rate while compressor and hand held nebulizers are taxed at the low rate when their use and purpose are identical.

We respectfully request a written response to our request for clarification of the rate classification for nebulizer sales and rentals. If you have any questions or need any additional information, please call me at #####.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided.

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

As stated above, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. A review of the Department's letter rulings reveals that the Department has consistently held that a nebulizer can qualify as a medical appliance if it directly substitutes for a malfunctioning part of the body, in this case the lungs. If a nebulizer is directly used to aid a patient in breathing thereby substituting for the patient's lungs, the nebulizer will qualify for the low rate. If however, the nebulizer were used to treat patients by administering medicine to them, the nebulizer would not qualify because it is not being used in a qualifying manner. The different tax treatment of the air compressor nebulizer and the ultrasonic nebulizer in ST-95-0059 was most likely due to the manner in which the different nebulizers were being utilized.

In summary, it is not the item itself that qualifies or does not qualify, but the manner in which it is being used. If a nebulizer is being used to

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administer medicine, it is not substituting for a malfunctioning part of the body and therefore does not qualify as a medical appliance. Nebulizers used in this manner are subject to the high rate of tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.